

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Earlier today, Plaintiffs Theranos, Inc., et al, (“Theranos”) and Defendants Fuisz Technologies, Ltd., et al (“Fuisz”) appeared for a hearing regarding the construction of several terms from United States Patent No. 7,824,612 (“612 Patent”). At the conclusion of the hearing, the court issued its constructions. So that the parties have a written account of the constructions, the court provides here its decisions:

being or to be taken by the patient or course of treatment for the patient	
reading the stored information stored on the data storage unit	Plain and ordinary meaning
data storage unit separately from the bodily fluid analyzer	Plain and ordinary meaning
setting the bodily fluid analyzer with the at least one threshold value for the at least one analyte to be sensed by the bodily fluid analyzer with the information read by the data reader from the data storage unit	Plain and ordinary meaning
a threshold value	Lower or upper limit

The parties should rest assured that the court arrived at these constructions with a full appreciation of not only the relevant intrinsic and extrinsic evidence, but also the Federal Circuit's teaching in *Phillips v. AWH Corp.*,¹ and its progeny. So that the parties may pursue whatever recourse they believe is necessary, a complete opinion will issue before entry of any judgment.

As the court informed the parties at the hearing, it wishes to construe the term "analyte," and so the parties have until next Friday, August 9, 2013 to submit a joint six-page brief² (three pages per side) explaining their meet-and-confer efforts regarding this term, whether they have reached agreement on the appropriate construction, and if not, their respective positions.

IT IS SO ORDERED.

Dated: August 2, 2013



PAUL S. GREWAL
United States Magistrate Judge

¹ 415 F.3d 1303, 1312-15 (Fed. Cir. 2005).

² The brief may be single-spaced. At the hearing, the court also ordered the parties to provide a joint brief also due August 9, 2013 of no longer than ten pages (five pages per side) regarding whether this case should proceed as a bench trial or jury trial. That brief likewise may be single-spaced.